

### **REMARKS**

Claims 1-10 and 30-41 are pending in the application. Claims 1-10 and 30-41 stand rejected. Claims 1, 10, 30, and 39-41 are currently amended.

Support for the amendment to claims 1, 10 and 30 can be found throughout the Specification, and in particular, FIGS. 1-8; page 8, line 29 to page 9, line 24; and page 10, line 30 to page 11, line 10. Claims 39-41 are merely amended to correspond to claims 1, 10 and 30.

### **INTERVIEW SUMMARY**

The Applicants appreciate the courtesy of the in-person Examiner's Interview between Examiner Jyoti Nagpaul and the undersigned Representative, Nicole Einerson, on April 8, 2010, for which an Interview Summary was issued on April 19, 2010. Applicants agree with the description of the substance of the interview, as reported in the Interview Summary. Namely, during the interview, the undersigned explained the language "the distal side of the mixing chamber is located at the same radial position or radially inward of the distal side of the process chamber," and presented how the claims of the present application differ from the Kellogg reference. Examiner Nagpaul and the undersigned agreed upon an amendment to include additional structural relationships, such as relative position with respect to an axis of rotation. Claims 1, 10 and 30 are currently amended accordingly.

### **AMENDMENTS TO THE SPECIFICATION**

The currently amended paragraphs of the specification were previously amended in the Preliminary Amendment dated March 11, 2004 to replace placeholders with pertinent application information. These paragraphs are currently amended merely to replace the U.S. Patent Application No. with its corresponding U.S. Patent No., as the patent application has since been granted. No new matter is added by these amendments.

### **§ 112 REJECTIONS**

Claims 1 and 30 stand rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 1 and 30 stand rejected for having insufficient antecedent basis for the limitation “the distal side of the mixing chamber.” Claims 1 and 30 have each been amended to call for the mixing chamber comprising “*a distal side.*”

As a result, the rejection of claims 1 and 30 under 35 USC § 112, second paragraph, has been overcome and should be withdrawn.

### **§ 102 REJECTIONS**

Claims 1-3, 6-7, 9-10, 30-32, 35 and 39-41 stand rejected under 35 USC § 102(b) as being anticipated by Kellogg et al. (U.S. Patent No. 6,302,134). This rejection is respectfully traversed.

For a claim to be anticipated under 35 U.S.C. § 102, each and every element of the claim must be found in a single prior art reference (*M.P.E.P.* § 2131). Applicants respectfully submit that Kellogg et al. fails to teach each and every element of claims 1-3, 6-7, 9-10, 30-32, and 35.

Each of independent claims 1, 10 and 30 each call for, among other things:

*“wherein rotation of the sample processing device about the axis of rotation moves at least a portion of sample material in the process chamber into the mixing chamber through the mixing port when the mixing port is open . . . ;*

*and wherein, when the valve of the process chamber is open, rotation of the sample processing device about the axis of rotation moves the sample material out of the process chamber and the mixing chamber.”*

As a result, claims 1, 10 and 30 call for moving at least a portion of the sample material from the process chamber into the mixing chamber through the mixing port when the mixing port is open (and the valve is closed), and moving the sample material out of both the process chamber and the mixing chamber when the valve is open. The process of mixing a sample by moving sample material from the process chamber into the mixing chamber, and back into the process chamber (and so on) is described in detail at page 9, line 4 – page 10, line 7 of the originally-filed specification. Applicants still fail to see how such structure is disclosed in Kellogg et al.

However, in the interest of advancing prosecution, Applicants have amended independent claims 1, 10, and 30 with the relational construct of the mixing chamber and the process chamber to clarify that the distal side of the mixing chamber is located no further from the axis of rotation than the distal side of the process chamber.

As shown below in the reproduction of FIG. 15C of Kellogg et al., taken from the Office action dated January 21, 2010 and including the Examiner's annotations, the Examiner equates the presently claimed "mixing chamber" to element 605 and the presently claimed "process chamber" to element 604.

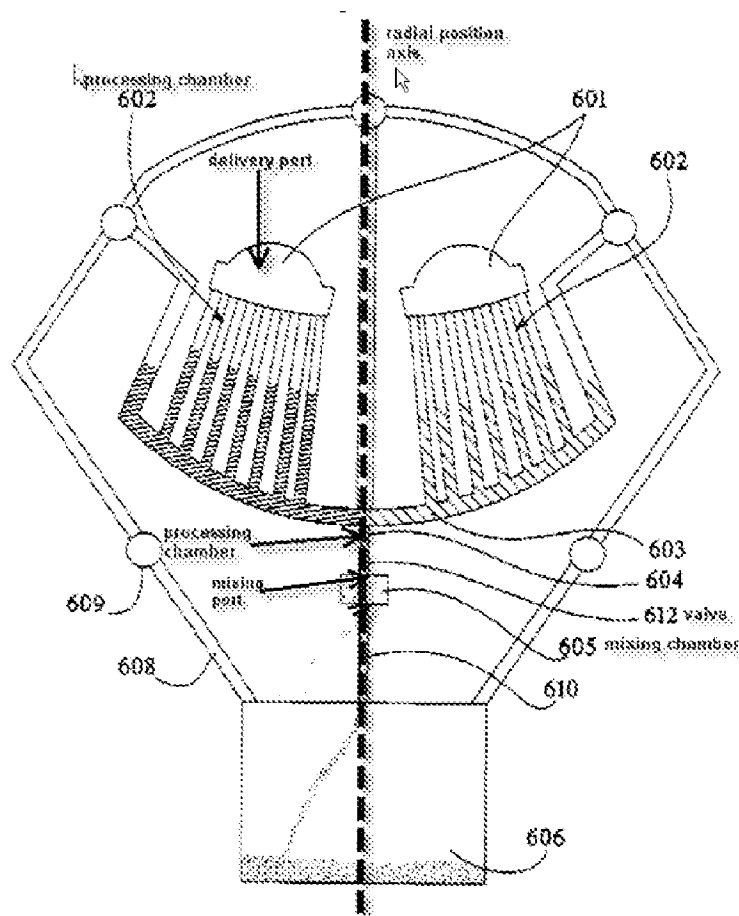


FIG. 15C of Kellogg et al. taken from the Office Action dated January 21, 2010, including the Examiner's annotations.

As shown in the above annotated FIG. 15C, the Examiner has called for a radial position axis that runs through the vertical center of FIG. 15C. However, as discussed in the Interview, such an interpretation of Kellogg et al. is inaccurate. The actual axis of rotation taught by Kellogg et al. runs through the page of FIG. 15C (i.e., perpendicular to the page), and is positioned vertically above the entire FIG. 15C. As a result, and as can be readily seen in FIG. 15C of Kellogg et al., the distal side, and even the proximal side, of the mixing chamber (605) is located further from the axis of rotation than the distal side of the process chamber (602) in Kellogg et al. As a result, Kellogg et al. does not teach each and every element of claims 1, 10 and 30.

Claims 2-3, 6-7, 9, 31-32 and 35 are each ultimately dependent upon claims 1, 10 or 30, and are therefore allowable for at least the reasons described above, and for the elements and features claimed in claims 2-3, 6-7, 9, 31-32 and 35, some of which are discussed below.

Regarding claims 6 and 7, nothing is identified within the disclosure of Kellogg et al. that teaches that the process chamber is located between a first major side and a second major side of the sample processing device, wherein at least a portion of the mixing chamber is located between the process chamber and the second major side of the sample processing device as recited in claim 6 or that substantially all of the mixing chamber is located between the process chamber and the second major side of the sample processing device as recited in claim 7. The result of such a construction is that at least a portion of the mixing chamber is located above or below the process chamber, thus offering the opportunity to save space on the device (*see, e.g., Specification*, p. 11, lines 11-14), such that the entire sample mixing structure has a smaller “footprint” on the device.

For at least the reasons discussed above, Applicants respectfully request reconsideration and withdrawal of the anticipation rejection of claims 1-3, 6-7, 9-10, 30-32, and 35 in view of Kellogg et al.

**§ 103 REJECTIONS**

Claims 4-5, 8 and 33-34 are rejected under 35 USC § 103(a) as being unpatentable over Kellogg et al.

Applicants respectfully submit that, in view of the deficiencies of Kellogg et al. as discussed above with respect to the anticipation rejection, a *prima facie* case of obviousness has not been established with respect to claims 4, 5, 8, and 33-34. More specifically, no showing has been made as to how or why one of ordinary skill in the art would modify the teachings of Kellogg et al. to reach invention claimed in claims 4, 5, 8 and 33-34.

For at least this reason, reconsideration and withdrawal of the obviousness rejection of claims 4-5, 8, and 33-34 are, therefore, respectfully requested.

**CONCLUSION**

In view of the amendments and remarks presented herein, Applicants respectfully submit that the application is in condition for allowance. Applicants request that the Examiner telephone the undersigned agent of record in the event a telephone discussion would be helpful in advancing the prosecution of the present application.

Respectfully submitted,

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Date

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